

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CURTIS JOHN-CHARLES,

No. 2:05-cv-00175-MCE-GGH P

Petitioner,

vs.

ORDER

STATE OF CALIFORNIA,

Respondent.

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Petitioner, a state prisoner proceeding with counsel has timely filed a notice of appeal of this court's February 11, 2009, dismissal of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

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1 A certificate of appealability should be granted for any issue that petitioner can
2 demonstrate is “debatable among jurists of reason,” could be resolved differently by a different
3 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
4 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

5 Petitioner has made a substantial showing of the denial of a constitutional right in
6 the following issues presented in the instant petition: 1) whether the court incorrectly used a prior
7 juvenile conviction as a strike to the increase the sentence; 2) whether the trial court denied
8 petitioner’s Sixth Amendment right to counsel by refusing to permit him to withdraw his Faretta
9 wavier.

10 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
11 issued in the present action.

12 Dated: June 25, 2009

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14 MORRISON C. ENGLAND, JR.
15 UNITED STATES DISTRICT JUDGE
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25 ¹ Except for the requirement that appealable issues be specifically identified, the standard
26 for issuance of a certificate of appealability is the same as the standard that applied to issuance of
a certificate of probable cause. Jennings, at 1010.